
Item 6

Action

Notice of Inactive Investigations

Executive Summary: This item discusses a possible practice of notifying respondents of inactive investigations.

Recommended Action: Approve proposed amendment to enforcement practices report.

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Notice of Inactive Investigations

A. Introduction

At the October 2017 meeting, Ethics Commission members asked staff to consider the possibility of providing notice to the subjects of investigations when an investigation transitions to inactive status. This report responds to that request.

B. Background

The Ethics Commission has never had a practice of providing notice when an investigation becomes inactive. The reason for this is that City law requires strict confidentiality regarding investigations. *See* Los Angeles City Charter (Charter) § 706(a)(2); Los Angeles Administrative Code (LAAC) §§ 24.23(a)(4), 24.29(c).

Preserving confidentiality is beneficial to both governmental and individual interests. For example, it discourages attempts to use an Ethics Commission investigation for personal or political purposes. It protects individuals who file whistleblower complaints, those who may be called as witnesses, and those who are accused of wrongdoing but may have done nothing wrong. However, it can be unsettling for a person who is the subject of an investigation to be unaware that no further action will be taken in the investigation. Currently, they simply wait for the statute of limitations to run out, which can take years.

C. Recommendation

To create a reasonable balance for respondents, we recommend that notice of inactive investigations be verbally provided to respondents who have been made aware that they are the subjects of investigations by Ethics Commission staff. The Los Angeles Administrative Code (LAAC) states that “information may be disclosed to a respondent ... as necessary to conduct an investigation.” LAAC § 24.29(c)(2). To make it clear that staff is authorized to provide notice of inactive investigations and that doing so does not violate the confidentiality mandate, we recommend that the enforcement practices report that was approved at the October 2017 meeting be amended to expressly state that this kind of disclosure about an investigation will be provided to respondents. In addition, because staff may be made aware of new information after a decision to take no further action, we recommend that respondents be informed that the investigation could be revisited in the future.

Specifically, we recommend that subsection D of the enforcement practices report be amended to read as follows:

D. Inactive Investigations

By law, all information related to an enforcement investigation must be treated confidentially unless public disclosure is specifically authorized or required. Charter § 706(a)(2); LAAC §§ 24.23(a)(4), 24.29(c). Confidentiality

regarding investigations is important because it protects the parties involved, safeguards the integrity and reputation of the Ethics Commission's enforcement work, and helps to ensure that the Ethics Commission cannot be used for personal or political purposes.

In certain instances, however, information about an investigation may be disclosed. For example, when necessary to conduct an investigation, information may be disclosed to a respondent or to a person designated in writing by a respondent as the respondent's counsel or representative. LAAC § 24.29(c)(2). One piece of information that is deemed necessary in the course of an investigation is notice that the investigation has become inactive. When a respondent has been made aware by Ethics Commission staff that the respondent is the subject of an investigation, it can be unsettling to be unaware that a decision has been made to take no further action. Instead of denying the respondent finality until the statute of limitations runs out, the Ethics Commission staff verbally notifies the respondent when the investigation becomes inactive.

It is possible for Ethics Commission staff to be made aware of new information about an investigation after a decision to take no further action has been made. For that reason, the notice provided to respondents includes statements that no evidentiary conclusions may be drawn from the decision and that the investigation may be resumed if new information comes to light within or that tolls the statute of limitations.

D. Conclusion

We recommend that the enforcement practices report be amended to clarify that the staff may provide verbal notice of an inactive investigation to a respondent who has been made aware by staff that the respondent is the subject of the investigation. We recommend approving the language above for that purpose.